TEXAS DEPARTMENT OF MOTOR VEHICLES

SPECIAL BOARD MEETING

10:04 a.m. Tuesday, April 26, 2011

via videoconference

BOARD MEMBERS:

From Mesquite: Victor Vandergriff, Chair Blake Ingram

From Houston: Cheryl E. Johnson, Vice Chair Laura Ryan Johnny Walker

From Pharr: Victor Rodriguez

STAFF MEMBERS:

From Austin: Ed Serna, Executive Director Brett Bray, General Counsel Molly Cost, Attorney

I N D E X

AGENDA ITEM		PAGE
1.	CALL TO ORDER A. Roll Call and Establishment of Quorum	3
	B. Public Comment	5
2.	Consideration of Final Order in Franchise Proposal for Decision under Occupations Code Chapter 2301 10-0045 - UV Country, Inc., Applicant v. Mainland Cycle Center, LLC, d/b/a Mainland Cycle Center and Goe Kawasaki, Inc., Protestants	11
3.	EXECUTIVE SESSION (not required)	
4.	ACTION ITEMS FROM EXECUTIVE SESSION (not required)	
5.	ADJOURNMENT	12

1

PROCEEDINGS

today to the meeting of the Board of the Department of Motor

cell phones and other communication devices in the silent

the Board of the Texas Department of Motor Vehicles to

order, and I want to note for the record that public notice

of the Government Code Section 551.127 which allows a state

video-conference if a majority of the quorum is physically

the board members. From our Houston location: Vice Chair

governmental body to hold an open or closed meeting by

present at one location of the meeting. We are video-

conferencing from Houston, Mesquite, Pharr and Austin.

of this meeting, containing all items on the agenda, was

filed with the Office of Secretary of State on April 18,

Victor Vandergriff, and I'm pleased to welcome you here

MR. VANDERGRIFF: Good morning. My name is

Before we begin today's meeting, please place all

I'm now calling the meeting for April 26, 2011 of

This meeting is being held under the provisions

And now I'd like to have a roll call, please, of

2

3

4

5

Vehicles.

mode.

2011.

Johnson?

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MS. JOHNSON: Present.

MR. VANDERGRIFF: Board Member Ryan?

ON THE RECORD REPORTING (512) 450-0342

MR. VANDERGRIFF: And from our Pharr location we 4 were going to have Board Member Rodriguez join. 5 I believe 6 he will join us -- there he is. I'm sorry. Present? 7 MR. RODRIGUEZ: Present. I'm sorry. 8 MR. VANDERGRIFF: And from our Mesquite location: 9 Board Member Ingram? 10 MR. INGRAM: Present. 11 MR. VANDERGRIFF: And let the record reflect that I, Victor Vandergriff, am here too. We have a quorum. 12 majority of the quorum is located in Houston. 13 Our agenda today is rather short. Our first item 14 on the agenda is for public comment. 15 This section is 16 reserved for general public comment, it is not for comment 17 on a specific matter before the department here this morning. I have been notified by the vice chair that we do 18 19 have four people in Houston wishing to speak in the public comment section. 20 21 I would ask that she apprize them of a couple of one, are they speaking for a public issue or are 22 23 they speaking on this case. If they're speaking on this 24 case, we are not taking public testimony on that. And then second, if they are speaking from the public that they are 25

MS. RYAN: Present.

MR. WALKER: Here.

MR. VANDERGRIFF: Board Member Walker?

1

2

1 limited to three minutes each, but again, that should be limited to matters not pertaining to the item on our agenda. 2 So since I can't see the parties that are there 3 or have their names, I'll turn it temporarily over to the 4 vice chair on those. 5 6 MS. JOHNSON: Good morning, everyone. The names 7 I have, and if you wish to address, I reflect back to the 8 If you wish to address public comment, go to the podium. Mr. Crow, do you wish to address public comment? 9 10 Mr. Crow does have public comment. If you'd like 11 to go to the podium, please. We're going to switch the 12 cameras over. MR. RYAN: Is this on the agenda item? 13 MS. JOHNSON: Under public comment. 14 It's regarding this and it's about 15 MR. CROW: 16 four minutes. I think it's very important that we be heard. 17 MS. JOHNSON: Mr. Vandergriff, let me have Mr. 18 Crow at least approach the podium. I think he wants to 19 speak specifically to this topic, to our next agenda item, and I know that you've said that it's restricted to public 20 21 comment issues generally. If he approaches the podium and he is incorrect in what he's going to say, then if you would 22 23 please stop his testimony. Thank you. 24 MR. CROW: Good morning. Thank you, Board, for this opportunity to speak. My name is Albert Crow and I'm 25

1 here for Mainland Cycle Center. I would like for the board to reconsider its 2 decision to grant the UV Country application. To make this 3 decision without weighing all the evidence will be harmful 4 to my business, my family, my employees and their families. 5 6 MR. VANDERGRIFF: Mr. Crow. 7 MR. RODRIGUEZ: Mr. Chairman. 8 MR. VANDERGRIFF: Yes. 9 MR. RODRIGUEZ: I thought we were not going to 10 take any testimony on this. 11 MR. VANDERGRIFF: We were not. You just beat me quickly to the punch. We had made the determination and 12 notified the parties that this was not an appropriate forum 13 for testimony, we've already had that. 14 So Mr. Crow, if you have a public comment you'd 15 16 like to make, then that would be fine, but if it's about 17 this case, then we're not taking additional testimony on 18 this case. 19 MR. CROW: What kind of public comment would you 20 be looking for? 21 MS. JOHNSON: Anything perhaps regarding the 22 process, anything more general. MR. CROW: Well, I just would like to be heard. 23 24 My comments are very, very brief.

ON THE RECORD REPORTING (512) 450-0342

MR. RODRIGUEZ: Mr. Chairman.

1	MR. VANDERGRIFF: Yes. Mr. Crow, I very much
2	appreciate your zeal here, but we had notified the parties
3	that this would not be an appropriate forum in which to take
4	additional public comment. That was done at the hearing we
5	had a couple of weeks ago.
6	MR. CROW: A few weeks ago did we know that this
7	hearing was going to take place?
8	MR. VANDERGRIFF: We notified the parties on the
9	18th. I'm talking about when we heard this case on April
10	14. So at this point, thank you, but we are not taking
11	testimony or any more comment on this particular case.
12	MS. JOHNSON: Thank you, Mr. Crow.
13	Let me check with the other individuals and see
14	if it's the same situation.
15	Mr. Mason, did you wish to address public
16	comment? And you may not comment on this particular case.
17	MR. MASON: I can comment in general.
18	MR. WALKER: Other than this case?
19	MR. MASON: I just wanted to comment on
20	procedure.
21	MS. JOHNSON: Mr. Mason would like to approach
22	the podium to address procedure issues, not regarding the
23	case specifically.
24	MR. VANDERGRIFF: All right.
	l

ON THE RECORD REPORTING (512) 450-0342

MS. JOHNSON: Mr. Mason.

MR. MASON: Thank you. Omar Mason. Just if I 1 may address the board about the information that we got from 2 my office. We contacted the office and we were advised that 3 there would be no further oral argument, however, there 4 would be an opportunity to speak during the public comment 5 6 section. MR. RODRIGUEZ: Mr. Chairman. This is still 7 about the same case, Mr. Chairman. I think the record is 8 9 already made on this. I agree. 10 MR. VANDERGRIFF: 11

Mr. Mason, I want to point out to you that you will continue to have opportunities to address this board with anything that you see as error during any motion for a rehearing, for example, if that's what you chose to do. So this is not the appropriate time to have those comments.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. MASON: And also, there was a reference made to testimony, no further testimony taken.

MR. VANDERGRIFF: Excuse me. No further comments, no further oral argument would be allowed. I misused the term testimony in that regard. We've heard the arguments.

MR. MASON: I just wish to be heard on the public comment.

MR. VANDERGRIFF: All right. As long as you're not talking about this specific case.

ON THE RECORD REPORTING (512) 450-0342

MR. MASON: Sure.

I come to you today as a concerned citizen of the state who happens to be a part of the legal community. I take much pride in our legal system. In my nearly twelve years of practice I've come to accept the fact that you win and some you lose some, but no matter what the outcome, what makes our legal system great is that it's designed to promote fairness, especially in disputed matters.

The laws of this system by which this department operates are no exception. The laws of the system provide for the utilization of a duly qualified administrative law judge bound by the rules of evidence and civil procedure to conduct hearings in contested matters, to listen to the whole story from both sides, to hear testimony from witnesses with the benefit of observing them firsthand and making credibility determinations, to weigh all of the evidence presented and make a recommendation to this board that is consistent with his or her findings and observations during the course of the proceeding. That's what the duties of the administrative law judge are, that's what he or she is charged with doing to carry out his or her duties.

It is not the board's position to serve as the fact-finder in any matter that's contested. It's not the board's duty to her unsworn testimony from witnesses who did not even testify at administrative hearings. That is not

1	thee board's duty.
2	And I just want to state for the record that I
3	ask that this board carry out its duties in a fair,
4	impartial manner and to give due deference to the process,
5	the due process that they're bound to follow in any type of
6	situation that's contested.
7	Thank you.
8	MR. VANDERGRIFF: Thank you for your comment.
9	Vice Chair, I think you said you had two other
10	people?
11	MS. JOHNSON: Yes, sir.
12	Mr. Stewart, do you wish to address?
13	(Response from audience.)
14	MS. JOHNSON: Mr. Stewart has withdrawn his
15	request.
16	And Mr. And Mrs. Tracy, do either of you wish to
17	address public comment?
18	(Response from audience.)
19	MS. JOHNSON: The other two have withdrawn their
20	request.
21	MR. VANDERGRIFF: All right. We're now on to
22	agenda item 2, unless there are any further cards for public
23	comment.
24	At our April 14 meeting we voted to grant UV

ON THE RECORD REPORTING (512) 450-0342

Country's application in Docket Number 10-0045. We directed

1	staff to draft a final order granting the application in
2	determining that the State Office of Administrative Hearing
3	ALJ's proposal for decision was in error based upon a
4	misapplication or misinterpretation of agency law and
5	technical errors in findings of fact. The proposed final
6	order prepared by the staff has been submitted for your
7	consideration.
8	I do see that Ms. Cost is available to answer
9	questions. Are there any questions for Ms. Cost?
10	MR. RODRIGUEZ: I move we approve, Mr. Chairman.
11	MR. INGRAM: Second.
12	MR. VANDERGRIFF: We have a motion from Board
13	Member Rodriguez and a second from Board Member Ingram. Do
14	we have any discussion?
15	(No response.)
16	MR. VANDERGRIFF: All right. All those in
17	support of the motion please raise your right hand.
18	(A show of hands.)
19	MR. VANDERGRIFF: All those opposed?
20	(No response.)
21	MR. VANDERGRIFF: Seeing none, the motion carries
22	unanimously of those present, six-zero.
23	So with that, I do not believe we have any need
24	for an executive session.
25	MR. RODRIGUEZ: Move we adjourn, Mr. Chairman.

ON THE RECORD REPORTING (512) 450-0342

1	MR. VANDERGRIFF: You're ahead of me. I'd be
2	pleased to entertain a motion to adjourn. I think we have
3	that from Board Member Rodriguez. Do I have a second?
4	MR. WALKER: Second.
5	MR. VANDERGRIFF: Second from Board Member
6	Walker.
7	All those in favor please raise your right hand
8	in support of the motion.
9	(A show of hands.)
10	MR. VANDERGRIFF: The motion carries six-zero, no
11	one voting against.
12	With that, we are adjourned. Thank you very much
13	for your attendance at this historic video-conference.
14	(Whereupon, at 10:17 a.m., the meeting was
15	concluded.)

CERTIFICATE

4 LOCATION: via videoconference

MEETING OF: TxDMV Board

5 DATE: April 26, 2011

I do hereby certify that the foregoing pages, numbers 1 through 13, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy King before the Texas Department of Motor Vehicles.

04/26/2011 (Transcriber) (Date)

On the Record Reporting 3307 Northland, Suite 315 Austin, Texas 78731